IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CRIMINAL APPELLATE SIDE

CRIMINAL WRIT PETITION NO.1606 OF 2006

Shri Ramesh Laxman Patil .. ..Petitioner
Versus
Sr.Inspector of Police,
Bazar Peth Police Station Kalyan & Ors...Respondents

Mr.S.R.Chitnis, Sr.Counsel i/b D.C.Mishra for petitioner
Mr.A.S.Gadkari, APP for State

CORAM : J.N.PATEL &
SMT. ROSHAN DALVI, JJ.

DATE : 5TH SEPTEMBER, 2006.

P.C.:

1. The Petitioner has invoked extra ordinary jurisdiction of this Court claiming to quash the proceeding under Chapter-VIII and particularly under Section 110(e)(g) of Cr.P.C. on the ground that the police have initiated this proceeding against the petitioner out of vengeance and vindictive attitude as he was released on bail in the Sessions Case on 5.6.2006 and that the petitioner was required to execute an Interim Bond and thereafter a Final Bond in the matter without following the procedure and therefore, the

petitioner claims that not only the proceeding is required to be quashed and set aside but he also deserves to be compensated for humiliation suffered by him and harassment to the extent that he was forcibly removed from Hospital and taken to Office of Respondent no.2 then and there notice was served on him under Section 110(e) (g) of Cr.P.C. and was asked to furnish two sureties of Rs.10000/= each for the period of 36 months.

2. The learned counsel for the petitioner placed reliance on the decision rendered by this Court in **Rajesh S/o Suryabhan Nayak vs. State of Maharashtra and ors. (2006 ALL MR (Cri) 1861)**. Therefore, the petitioner submits that he is entitled to be compensated.

3. In the affidavit in reply filed by the concerned S.E.M. in his capacity as Asstt. Commissioner of Police, Kalyan Division, Kalyan facts are not disputed that the interim bond was got executed from the petitioner and without conducting any enquiry a final bond was obtained.

4. We find that this has resulted in causing procedural injustice to the petitioner by depriving him of an opportunity to contest the Chapter proceeding initiated against him. Therefore, though the petitioner has alternative remedy before approaching this Court by preferring a Revision against the order directing the petitioner to furnish interim bond as well as final bond this Court has entertained this petition considering the extraordinary circumstances which were demonstrated in the petition particularly about adopting an unjust and unfair procedure in conducting the proceedings and passing the interim as well as final order directing the petitioner to execute the bond without giving an opportunity to contest the proceedings.

5. IN order to examine as to whether the allegations made by the petitioner are justified we have called for the original record and proceedings from the file of the SEM, Kalyan, the learned APP fairly stated that the SEM has failed to follow the procedure prescribed in the matter under Chapter-VIII of Cr.P.C. This vitiates the whole proceedings and therefore, we quash and set aside the impugned order.

6. The learned APP submits that this is the first occasion when it has come to the notice that the SEM has failed to adopt procedure prescribed for exercising his powers under Chapter VIII of Cr.P.C., this Court may give him an opportunity to rectify his mistake as the SEM assures this Court that in future he will strictly conduct the proceedings in his Court in accordance with law. Mr. Chitnis, the learned Sr. Advocate has shown his magnanimity and fairness in stating that as his grievance stands vindicated, he is not insisting for any compensation in the matter and he is satisfied with the fact that this Court has quashed and set aside the proceedings and Bond. The Petition therefore stands disposed of accordingly.

(J.N.Patel, J.)

(Smt.Roshan S.Dalvi,J.)